VERMONT

PUBLIC SERVICE DEPARTMENT

Annual Report on the Public Advocacy of the Vermont Department of Public Service Pursuant to Act 130

A Report to the Vermont House Committee on Energy and Technology, the House Committee on Commerce and Economic Development, the Senate Committee on Finance, and the Senate Committee on Natural Resources

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Table of Contents

Introduction 1

Department's Duties under Title 30 3

Significant Matters of the Past Year 4

- Case No. 18-0169 – Vermont Gas Tax Refund & Case No. 18-0216 – Green Mountain Power Tax Refund 4
- Docket 17-3142-PET – Vermont Department of Public Service Request for a Workshop on Utility Rate Regulations 5
- Case No. 17-3112-TF – Green Mountain Power 2018 Rate Case 8
- Case No. 18-0409-TF – Vermont Gas 2019 Rate Case 9
- Case No. 18-0974 – Green Mountain Power 2019 Rate Case 11
- Case No. 8887 – Dairy Air Wind, Holland, Vermont 12
- Docket 8816 – Swanton Wind – S. Ct. No. 2018-068 13
- Case No. 17-5024-PET – Petition of Chelsea Solar LLC for a 2.0 MW solar electric generation facility in Bennington, Vermont 17
- Case No. 17-3550-INV – Investigation regarding the alleged failure of Vermont Gas Systems, Inc. to bury the pipeline at the required depth in New Haven, Vermont 19
- Requests for Determination of Energy Compliance Pursuant to 23 V.S.A. §4352 22

Conclusion 24

Introduction

Act 130 of 2016 requires the Department of Public Service ("Department" or "DPS") to annually submit to the General Assembly a report regarding the activities of its Public Advocacy Division. This is the third annual report submitted by the Department. The Public Advocacy Division was involved in over 400 matters this past year. This caseload entailed matters of rate setting, siting of new energy projects, and the safety of a gas pipeline to name just a few. Specifically, Act 130 requires the report to address:

- A summary of significant cases concluded within the past year;
- The positions taken by the Department in those cases;
- A summary of the Department's role and positions with respect to other significant topics addressed by the Department's Public Advocacy Division pursuant to alternative regulation or to litigation before the Public Utility Commission[1]("PUC" or "Commission") or other tribunal;
- Specific references to the Department's duties and responsibilities under Title 30, and an explanation of how the Department's positions and activities align with those statutory provisions; and
- The terms of any settlement or memorandum of understanding ("MOU") negotiated by the Department in such cases, the parties that participated in any settlement or MOU negotiations, and documentation of what the Department was able to negotiate on behalf of residential ratepayers and what the Department conceded that was beneficial to the applicable public service company.

Act 130 further provides that: "The primary purpose of the reporting requirement of this section is to help address concerns regarding any potential compromise of the effectiveness or independence of the Department's representation of ratepayers in rate proceedings, including base rate filings under an alternative regulation plan."[2] Concerns regarding the transparency of, and benefit to, ratepayers resulting from alternative regulation have been much of the focus of the Department this past year. To that end, in April 2017, the Department initiated a proceeding

[1] Pursuant to Section 9 of Act 53 of the 2017 legislative session, the Vermont Public Service Board's name was changed to the Vermont Public Utility Commission, effective July 1, 2017. For clarity, activities of the Vermont Public Service Board that occurred before the name change will be referred to in this document as activities of the Commission unless that would be confusing in the specific context.

[2] Act 130 of 2016, Section 5f (b).

before the PUC to examine various - and potentially more effective - models of alternative regulation. An additional goal of the Department was to bring together stakeholders to explore ways in which the process could be made more transparent and "user friendly" to non-lawyers and non-experts who wish to participate in such proceedings. At the conclusion of a lengthy collaborative process, on July 23, 2018, the Commission issued an order which is squarely aimed at making alternative regulation a more transparent and open process for the public. In a time when much change is being expected of Vermont electric utilities - grid transformation and modernization, electric vehicle integration, innovative programs and the continuing demand for more renewable energy development - alternative regulation is the most viable path for Vermont utilities to take in moving forward in navigating and executing on this changed regulatory environment. Transparency in the processes that are bringing about this change is of paramount importance and the efforts of the Department and other stakeholders in that vein over this past year have succeeded.

Alternative regulation helps to overcome the limitations of traditional regulation that with its singular focus on rate setting as a function of tying sales to utility profitability. Alternative regulation moves beyond that focal point and facilitates regulatory actions that implement state law and energy goals by connecting public interest outcomes (e.g. renewable energy and vehicle electrification), and utility financial performance. Alternative regulation allows more precise and effective guardrails to be designed for utility operations and investments (e.g., caps on capital spending). Alternative regulation also presents the means to limit rate increases over multiple years, thereby providing rate stability and predictability and a cost management opportunity for ratepayers that is not possible under traditional regulation where utilities unilaterally decide when to seek a rate change without regard for whether the timing or magnitude of the rate request will have any disruptive effects on ratepayers who need stability and predictability to manage their own budgets.

In addition to this comprehensive review of alternative regulation, this past year saw the completion of two traditional rate cases involving Green Mountain Power Corporation and Vermont Gas Systems, Inc. In those two cases, the Department's advocacy resulted in some $12,000,000 in savings for Vermont ratepayers.

The report also highlights a case in which the Department was actively engaged in the ongoing integrity management and oversight of the Addison Natural Gas Project. The

Department's advocacy in this ongoing matter seeks to verify and ensure the continued safe operation and regulatory compliance of the natural gas pipeline.

Another notable matter included in this report is the Chelsea Solar case which highlights the concern and involvement of local communities with regard to the siting of solar projects. This case was vigorously litigated, with the Department ultimately opposing the project based upon concerns regarding aesthetics and orderly development.

Department's Duties under Title 30

General Provisions

The statutes directing the Department's work are found in Title 30. Section 2(a) directs the Department to "supervise and direct the execution of all laws" relating to public service entities. Section 2(a)(6) directs the Department to represent "the interests of the consuming public in proceedings to change rate[s] …." Section 2(b) broadens that focus, stating that "In cases requiring hearings by the PUC, the Department, through the Director for Public Advocacy, shall represent the interests of the people of the State, unless otherwise specified by law."

The duties of the Department fall into two broad categories – planning and regulating. Regarding the planning functions, the Department prepares and issues long range plans that guide the evolution of energy and telecommunications industries in Vermont. The regulatory functions of the Department include representing the public interest (as developed in the various plans) as a party in virtually all cases before the PUC.

Generally speaking, in its regulatory functions, the Department participates in cases where a party petitions the PUC to construct an energy or telecommunications facility, and in cases involving rates charged and services rendered by regulated service providers. The cases involving construction of energy facilities are reviewed under Title 30, Section 248, with the applicant seeking a CPG to build a facility. Rate cases, service quality cases, and other cases are generally brought by a utility wishing to increase its rates, change its services, or undertake another action for which PUC approval is required. Additionally, with respect to any matter within the jurisdiction of the PUC, the Department may initiate proceedings on its own motion. The Department may also initiate rule-making proceedings before the PUC.

Significant Matters of the Past Year

What follows is a high-level summary of some of the matters in which the Department has participated over the past year. It is by no means exhaustive, but hopefully will provide a balanced look at the advocacy undertaken by the Department.

Case Summaries and Positions Taken

Case No. 18-0169 – Vermont Gas Tax Refund & Case No. 18-0216– Green Mountain Power Tax Refund

Immediately after the federal tax code was amended in December 2017, the Department contacted both GMP and Vermont Gas Systems, Inc. ("VGS"), to initiate discussions regarding appropriate processes to ensure that ratepayers received their share of tax savings as expeditiously as possible. GMP and VGS are the only investor-owned utilities in Vermont, and therefore are the only utilities that directly benefited from the revised federal tax code. VGS and GMP both agreed to cooperate with the Department to identify the correct amount of tax savings and develop a credit mechanism that would ensure that customers were able to immediately receive the benefit of the tax savings. As result, VGS and GMP, after consultation with the Department, both filed proposals to return tax savings directly to customers within approximately a month after the federal law was amended.

On January 23, 2018, VGS filed a petition with the Commission requesting authority to issue customer credits to reflect tax savings that resulted from changes in federal law that reduced VGS's effective corporate tax rate in December 2017. Changes in the federal tax code resulted in a $2.4 million reduction to VGS's cost-of-service for the 2018 rate year, which had been approved by the Commission after a contested rate case in October 2017. VGS proposed to return a tax credit to customers as a line item credit on bills on a monthly basis for the remainder of the 2018 rate year (through October 2018).

On January 26, 2018, GMP filed a similar petition with the Commission requesting authority to issue tax savings credits to customers. GMP proposed to reduce its 2018 rate year cost-of-service by approximately $6 million, which would result in a monthly line-item bill credit that amounted to a 1.18% rate reduction.

The Department supported the requests from both GMP and VGS. The Commission issued orders approving the VGS petition on January 24, 2018 and the GMP petition on February 8, 2018. This outcome placed Vermont first among the states in the nation to ensure that investor-owned utilities returned these substantial tax savings directly to customers.

Docket 17-3142-PET – Vermont Department of Public Service Request for a Comprehensive Review of Utility Rate Regulations

On April 10, 2017, the Department sought an investigation before the PUC to evaluate the state of existing forms of Vermont rate regulation of its utilities in light of emerging transformational and modernization trends in the energy sector. The Department observed that in the last decade, Vermont's largest utilities have existed under a form of alternative regulation and that an assessment of the performance of that regulation was due in light of some major changes in these industries, including technology change (advanced metering infrastructure deployment), emergence of electric vehicles, deployment of battery storage technologies and heat pumps, to name a few.

On June 17, 2017, the Commission granted the Department's request and opened an investigation in the following areas:

- Review of regulatory practices and performance in Vermont as well as in other jurisdictions;
- Identification of emerging industry trends and opportunities; and
- Discussion of regulatory goals, how they can be articulated and measured, and how they overlap with existing statutory criteria.

Two workshops were convened by the Commission. The Department participated with significant substantive contributions, as did a wide array of stakeholders. The first of these

workshops was held on August 8, 2017. Among the topics covered at the workshop were the following: (1) principles of rate regulation; (2) rate designs; (3) grid impacts; and (4) issues specific to municipal or cooperative utilities. A second workshop was held on September 12, 2017 and focused on the following areas: (1) forms of non-traditional regulation used in jurisdictions outside Vermont, including recent proposals in states that are conducting similar regulatory reform proceedings, and (2) variations in the way traditional regulation is practiced in other jurisdictions.

The Department was active throughout this process and provided guidance documents that initiated the investigation, guided the direction of the investigation through detailed filings on process and topics, and actively participated in both workshop proceedings. Through its advocacy, the Department highlighted the following areas for future emphasis:

- Decoupling –The Department recommended that financial decoupling is essential for a utility system. Decoupling removes the utilitys' inherent incentive to grow sales associated with traditional ratemaking – which can be at odds with the interests of ratepayers in finding clean, lower cost alternatives such as energy efficiency.
- Transparency –The Department recommended that future alternative regulation plans place greater emphasis around the transparency of the plans that are put in place. The relatively abbreviated mini-rate-case nature of annual rate reviews of past plans compromised their transparency to the public.
- Overcapitalization – The Department raised concerns with the risk of overcapitalization under both traditional and alternative regulation. Future plans must control this risk going forward.
- Innovation – Traditional regulation is intended to replace the discipline of competitive markets. Alternative regulation holds promise for spurring more innovative regulation. The Department emphasized the need to better leverage the role of third-party competitive service providers in pursuit of innovation.
- Incentives for cost management and customer service – The Department emphasized the need to align incentives for cost containment.
- Incentives for public interest outcomes – The Department urged alternative regulation to place greater emphasis on public interest outcomes.

- Financial risk, cost of capital, purchase power costs – The Department also made recommendations for greater emphasis on ways to reduce financial risk and pressures in service of lower customer costs.

The Department recommended the Commission establish clear principles around the following topics:

- Transparency of the proceedings;
- Periodic formal review of cost-of-service;
- Incentives for cost management in operations;
- Incentives for cost management of capital budgets;
- Incentives for cost management of power supply;
- Well-formed objectives for performance;
- Decoupling;
- Incentives for alignment of consumer and public interest with management;
- Outreach and communication with customers;
- Management of the scope of flow-through items and trackers;
- Protections against windfall profits or losses; and,
- Interaction of different forms of regulation with low-income assistance programs.

At the conclusion of the investigation, the Commission issued a final order on July 23, 2018, and established principles around the following topics:

- Advancement of State energy policy;
- Open participation and transparency;
- Form of alternative regulation;
- Alternative rate regulation;
- Multi-year rate plans; and,
- Service quality and performance mechanisms.

In broad terms, the Department's advocacy provided a framework for utilities to file plans going forward. To date, the filings of the utilities have demonstrated success in this endeavor. The investigation and conclusions of the Commission helped to reinforce the central role that these plans can play in furthering the state's ambitions around the forms of regulation.

Case No. 17-3112-TF – Green Mountain Power 2018 Rate Case

On April 14, 2017, GMP filed a petition for a traditional cost-of-service rate case with the PUC. GMP initially sought a 5.33% rate increase, which was based on a proposed cost-of-service of approximately $644 million.

Position of the Department

The Department challenged a broad series of capital costs and expenses that GMP included in its rate filing. After conducting six rounds of extensive written discovery requests and filing direct and rebuttal testimony, the Department recommended that the Commission reduce GMP's proposed cost-of-service by $17.62 million, or a 2.96% decrease from GMP's proposed rate increase. Among other things, the Department recommended that the Commission reduce GMP's purchase power costs by $1.95 million and GMP's proposed allowed rate of return on equity ("ROE") from 9.5% to 8.75%. The Department also recommended that the Commission disallow approximately $24.6 million of GMP's proposed rate base adjustments because GMP had provided inadequate documentation for a substantial portion of the capital investment projects included in the rate case. Specifically, the Department argued that GMP failed to maintain documents regarding its internal management review process for individual projects, did not adequately consider alternative projects for many of the proposed capital projects, and often failed to conduct comprehensive cost-benefit analyses for significant capital investments.

MOU between the Department and GMP

Following contested evidentiary hearings, the Department and GMP entered into a MOU that required a $20 million reduction in GMP's proposed capital spending for the 2018 rate year and an ROE reduction to 9.1%. The reductions agreed to by GMP through testimony, during the hearings, and under the MOU resulted in an approximate 1.8% decrease to GMP's total proposed

rate increase. The Department's principal reason for entering into this MOU was the heightened consideration given to residential and low-income ratepayers interests as contemplated under 30 V.S.A. § 2(f). During the evidentiary hearing, applying traditional ratemaking principles, GMP conceded that certain construction delays required the removal of three solar/storage projects from the rate case, the effect of which was to justify an increase GMP's revenue requirement by an additional 1.66% owing to the removal of one-time revenues associated with those projects.

Therefore, although the MOU included ratepayer savings that reduced GMP's revenue requirement by approximately 1.8%, the MOU included a rate increase of 5.02%. However, absent the MOU, the evidentiary record plainly would have supported a rate increase of approximately 7%. Mindful of its obligations under 30 V.S.A. §2(f), the Department averted the risk of this undesirable contested-case outcome by entering into a settlement with GMP that limited the rate increase to 5.02% . It bears noting that this settlement was opposed by Global Foundries, an intervening party who was able to capably represent its own interests before the PUC.

Importantly, the MOU also included an agreement between the Department and GMP regarding documentation requirements for capital investments in future rate cases. This agreement established firm requirements for the types of documentation that GMP is required to generate and maintain for all capital investments. It also establishes financial analysis requirements for all capital projects and a separate requirement that GMP conduct rigorous cost-benefit analyses for all projects that exceed $2 million. The MOU was approved by the Commission in an order dated December 21, 2017.

Case No. 18-0409-TF – Vermont Gas 2019 Rate Case

On February 15, 2018, VGS filed a petition for a traditional cost-of-service rate case with the PUC seeking a 4% base-rate increase and authorization to make a net $2.9 withdrawal from the System Expansion and Reliability Fund ("SERF"). The SERF was previously established by the PUC in 2012 to mitigate rate impacts to VGS customers caused by the addition of the Addison Natural Gas Pipeline ("ANGP") by smoothing rate increases associated with the pipeline over an extended period of time. VGS's petition also reflected an allowed return on equity ("ROE") rate of 8.5%, which is a fixed penalty rate set by the PUC based on the

Department's advocacy in a prior rate case where the PUC found that VGS has been imprudent in its planning of the ANGP.

Position of the Department

The Department recommended that the Commission approve a 3.9% base rate increase with a $950,000 withdrawal from SERF. The Department's position reflected its overall recommendation that the Commission reduce VGS's proposed cost-of-service by approximately $2 million, or approximately 4% of VGS's overall revenue requirement. The majority of the Department's recommendations were related to VGS's proposed operations & management ("O&M") expenses, including VGS's proposed short-term incentive compensation plan, benefits, and total salary output. The Department also recommended that the Commission disallow capital costs associated with portions of the distribution network in Addison County that are still under construction (or still in the planning phase) until those lines are actually completed. The Department further recommended that VGS cease future SERF collections, and ensure that the remaining SERF balance (which totaled $22.5 million as of 12/31/2017) be returned to customers by the end of the VGS 2021 rate year.

MOU between the Department and VGS

On August 23, 2018, the Department and VGS entered into a MOU recommending that the Commission approve a 3.9% base-rate increase and a $1.92 SERF withdrawal. While the base-rate increase is consistent with the DPS's initial position, the MOU achieves approximately $1 million of direct ratepayer savings through preserving SERF funds and reducing VGS's overall revenue requirement by approximately 2%. The Department agreed to the MOU because, after considering all of the evidence and data that was produced over the course of this contested proceeding, the Department concluded that the MOU would best advance ratepayer interests, which include ensuring stability and continuity of service by in turn ensuring that VGS remains financially sound. Importantly, the Department was also able to secure an agreement for VGS to cease future SERF collections, which was a highly contested issue throughout the litigation. VGS further agreed to return all remaining SERF funds to customers by the end of its 2021 rate

year. Again, mindful of its obligation under 30 V.S.A. §2(f), he Department advocated to ensure that ratepayers no longer contributed to SERF, and that VGS use the remaining SERF funds to mitigate rate increases over the next three years. Also, as a result of expected decreases to the cost of natural gas which will more than wholly offset the base rate increase, VGS customers will likely see a net rate decrease of 3.6% under the MOU. The Commission approved the MOU on October 26, 2018.

Case No. 18-0974 – Green Mountain Power 2019 Rate Case

On April 13, 2018, GMP filed for a proposed 5.45% base rate increase which will be offset by a $27.4 million credit to ratepayers that reflects a return of federal tax savings. The net effect of GMP's proposal is that customers would have a 0.5% rate decrease for the first nine months of 2019. GMP represents that the rate increase is driven largely by increases to power, transmission, and net-metering costs coupled with a reduction in retail sales. GMP's rate request also includes a proposed rate of return on equity ("ROE") of 9.3%.

Position of the Department

The Department recommended that the Commission reduce GMP's rate increase to 4.96%, which represents an approximately $2.045 million reduction to GMP's proposed cost-of-service. The Department's rate reduction recommendations in this case focus almost entirely on capital projects that GMP has proposed for the rate year because the vast majority of GMP's operations and management ("O&M") costs are fixed for ratemaking purposes based on a 2014 order from the Commission and because the Department's retained cost-of-capital expert found that GMP's proposed 9.3% ROE is reasonable. In total, the Department has recommended that the Commission disallow approximately $32 million of proposed capital spending by GMP.

Contested evidentiary hearings were held before the PUC on October 25, 2018. A final order from the Commission is statutorily required to be issued by December 31, 2018.

Docket No. 8887 - Dairy Air Wind, Holland, Vermont

On December 30, 2016, Dairy Air Wind, LLC ("DAW") petitioned for a Certificate of Public Good ("CPG") for a proposed single-turbine, 2.2 MW electric generator. The turbine would be located in a farm field in Holland, Vermont, and would be quite close to occupied homes and to the adjacent roadway. The Project received a Standard-Offer contract through that program, but is still required to obtain a CPG under 30 V.S.A. § 248.

Local opposition emerged immediately. A vote in the Town of Holland found a significant majority opposed to the Project. The Town of Holland intervened, as did the Town of Derby, four towns in Canada, the Northeastern Vermont Development Association, the International Water Company, Vermont Electric Cooperative, Green Mountain Power and six *pro se* individuals. A local group (Citizens for Responsible Energy in Holland, or CREH) was formed and also intervened, though it later withdrew. All intervenors oppose the Project. Four State agencies are also participating (PSD; the Agency of Natural Resources; the Agency of Agriculture, Food and Markets; and, the Division of Historic Preservation). Local opposition is based largely on visual aesthetics, noise impacts, and the potential for ice throw or drop from the turbine blades (especially onto the nearby road).

Position of the Department

Opposition from the Department and the intervening utilities is substantially based on the location of the Project in the transmission-constrained SHEI area. (See explanation of the SHEI issue in the discussion of the Swanton Wind case.) As a Standard Offer project, Dairy Air would not be subject to curtailment by the ISO-New England, but its operation is expected to exacerbate the curtailment of other projects such as the Kingdom Community Wind and Sheffield wind energy facilities. The Department, VEC, and GMP filed testimony opposing issuance of a CPG, as did nearly all of the intervenors.

The Department has testified that the proposed Project failed to meet criteria Section 248(b)(2) (need), (b)(4) (economic benefit), and (b)(10) (impact on transmission facilities). The Department's aesthetics expert testified that the Project would have an unduly adverse aesthetic

impact, and would interfere with the orderly development of the region. Finally the Department's sound expert testified that the Petitioner had not shown that the Project would meet the PUC's noise standards.

Since the transmission-related (SHEI) issues were potentially dispositive of the case, on April 20, 2018, the Town of Holland moved to bifurcate the hearings so that those issues would be heard and decided first. The DPS and other parties supported this motion, while the Petitioner vehemently opposed it. On May 2 the PUC granted it bifurcation, and also ruled that it would hear these issues directly rather than by a Hearing Officer. There followed a flurry of filings regarding the scope of a bifurcated hearing, as well as a motion to reconsider filed by Dairy Air.

On October 22 the PUC reversed its order bifurcating the hearings, ruling that all of the criteria would be heard together, and remanding the case to the Hearing Officer. Part of the rationale for granting bifurcation was that the SHEI issue was one of first impression; however, since the issuance of that bifurcation order, the PUC heard another case in which the SHEI issue was presented (and which is currently awaiting a decision). In addition, the PUC concluded that hearing the case in one set of hearings would lead to more expeditious resolution of the case.

On October 24 the Hearing Officer issued an order denying the Town of Holland's motion for summary judgment, and staying the proceeding until Dairy Air files a sound model based on the specifications of the actual turbine proposed to be constructed. While statute prevents the PUC from rejecting a petition as incomplete based on the failure to specify a particular turbine model, the applicable Temporary Sound Rule requires that the Petitioner must file a sound model reporting expected maximum sound levels, and it must be based on the technical specifications of the turbine proposed for use at the facility. The Hearing Officer did not set a deadline for submission of the sound model. The Department anticipates that once it is filed there will be further process including discovery and filing of rebuttal testimony.

Docket 8816 Swanton Wind – S. Ct. No. 2018-068

On September 8, 2016, Swanton Wind LLC ("Swanton") petitioned the PUC for a CPG authorizing construction of up to seven large-scale wind turbines with a combined capacity up to

20 MW on a ridge in Swanton Vermont owned by the Belisle family. The Project area was relatively close to neighboring homes, many in a neighborhood developed by the Belisles. As a result of its location, the proposed Project drew significant local opposition, fueled in part by concerns about visual aesthetic impacts as well as noise. Many neighbors intervened in the proceeding. Forty-nine parties joined the case, including 38 neighbors (many representing themselves), the Towns of Swanton and Fairfield, the Northwest Regional Planning Commission, and the Vermont Air National Guard. Green Mountain Power and the Burlington Electric Department also intervened, motivated by the Project's likely effects on the regional transmission system as explained below. Parties also included state agencies: the Agency of Natural Resources, the Division for Historic Preservation, the Agency of Transportation, the Agency of Agriculture, Food & Markets, and the DPS.

A significant concern for the DPS and the intervening utilities was the Project's location in a transmission-constrained area. This large area[3] of northern Vermont, known as the Sheffield-Highgate Export Interface or SHEI, is characterized by relatively light electrical loads and a relatively large amount of electrical generation. This generation includes sources such as the Highgate Converter which transports electricity into Vermont from generators located in Canada, as well as generators located in Vermont. Vermont generation includes a significant amount of renewable generation developed within the last ten years, such as the wind turbine projects located in Lowell, Sheffield, and Georgia, as well as numerous solar projects. The imbalance between generation and local consumption means that large amounts of electricity must be exported out of northern Vermont to reach loads elsewhere, over a transmission system that was not designed to accommodate such large exports. When this "export interface" is in danger of becoming over-loaded, the independent system operator, ISO-New England, orders some generators to reduce, or "curtail," their output.

Curtailment of renewable energy projects negatively affects Vermonters in at least two ways. On a policy level, Vermont has committed significant parts of its landscape (most notably, prominent ridgelines) to the development of renewable energy projects. This was done in

[3] The boundaries of the SHEI area are dynamic, meaning that the precise area affected changes as conditions on the grid change.

furtherance of the policy goals of reducing reliance on fossil fuels and reducing production of greenhouse gasses. *See* 30 V.S.A. §§ 8001, 8006a. Development of new projects that will reduce the output of existing renewable-energy generators reduces the value of those existing generators as well as their contribution to the policy goal, while committing previously undeveloped landscape to new development with attendant impacts on aesthetics, wildlife, and habitat.

The second impact on Vermonters is a financial impact. Some renewable energy projects (such as Kingdom Community Wind in Lowell) are financed by captive ratepayers, who must pay all of the costs regardless of the project's output. Other projects are under contract to Vermont utilities, which are obligated to purchase output at a set price per MWh. In the first case, utility-owned projects, a reduction in output directly increases the cost per MWh (since the costs are primarily fixed). In the second case, of merchant generators, utilities obligated to purchase the power may have to replace reduced output at higher cost, or may be unable to sell excess power due to the constrained transmission system.

Position of the Department

The Department analyzed the project under the criteria of 30 V.S.A. § 248 that Swanton Wind was required to meet in order to receive a CPG, and that are traditionally addressed by the DPS. Criteria within the scope of the DPS's review that engendered the most concern were Section 248(b)(3) (system stability and reliability), (b)(4) (economic benefit), (b)(5) (aesthetics and sound)[4], and (b)(10) (impact on the transmission system). As it turned out, the only party to file testimony was the Petitioner, which filed in support of its petition. The Department did, however, meet with and assist *pro se* intervenors, and participated in extensive discovery and motion practice. The Department concluded that the proposed Project would impose unacceptable aesthetic and acoustic impacts, and that its operation was likely to result in the curtailment of existing energy facilities as described above.

[4] But see § 248(a)(4)(E) re: ANR's duty to provide evidence on criterion (b)(5), which includes aesthetics.

Transmission issues were a key DPS concern, and the Petitioner's prefiled testimony addressing criteria (b)(3) and (b)(10) was notably thin. The filing did not include a System Impact Study ("SIS") or any evidence sufficient to meet (b)(10). While the PUC had approved projects without a SIS (the approval being conditioned on subsequent filing and review of the Study), it concluded that such was not appropriate in a case where a significant amount of new generation was proposed for an area already experiencing transmission constraints and curtailment of other renewable energy projects. In an order issued June 22, 2017, the PUC concluded that the Petition was incomplete without a SIS, put the proceeding on hold and directed the Petitioner to file a complete SIS, and to regularly update the PUC and parties as to the progress of this study. The Petitioner moved for reconsideration of the June 22 order, with the DPS and all other parties opposing the motion and supporting the PUC's order. The Department requested that the Commission also order a curtailment study. The Motion for Reconsideration was denied, as was the DPS request for a curtailment study.

On November 27, 2017, Swanton Wind withdrew its Petition without prejudice, and requested the return of the filing fee of $100,000 paid pursuant to 30 V.SA. § 248b (to support ANR's activities in reviewing petitions under § 248). Following responsive filings from the parties (some seeking payment of attorneys' fees), on January 3, 2018, the PUC issued an order granting withdrawal without prejudice. The Commission found that it lacked jurisdiction to order a refund of the $100,000 filing fee, and stated that if Swanton re-filed its Petition, the PUC would entertain motions for attorneys' fees from other parties. On February 2, 2018, the Petitioner appealed to the Vermont Supreme Court. Issues raise on appeal were the PUC's ruling that the Petition was incomplete without a SIS, the failure of the PUC to order a refund of the filing fee, and the invitation to other parties to seek attorneys' fees if the case was re-filed in the future.

The appeal was fully briefed, with the Attorney General's Office addressing the filing fee issue and DPS handling all other issues. Oral argument was held September 12, 2018. A decision has yet to be issued.

Case No. 17-5024-PET - Petition of Chelsea Solar LLC, for a 2.0 MW solar electric generation facility in Bennington, Vermont

This case involves a petition for a Certificate of Public Good ("CPG") for a proposed 2.0 MW solar electric generation facility in Bennington, Vermont. The procedural history of the case is significant because the process has been fiercely litigated at every step, and the filings have become voluminous. The petition for the original project, Chelsea I, was filed on June 19, 2014, in Docket No. 8302. On February 16, 2016, the Commission issued an order denying the Chelsea I petition because the Commission concluded that the project would unduly interfere with orderly development in the region, and would have an undue adverse effect on aesthetics and on the scenic and natural beauty of the area. Between March 14, 2016, and January 24, 2017, Chelsea filed nine motions requesting that the Commission reconsider its Denial Order, including a motion to amend the project which would reduce the project footprint to 10.2 acres by using different, more efficient solar panels. All nine Chelsea motions were denied.

On September 8, 2017, Chelsea filed an additional motion requesting that the Commission vacate the Denial Order and the nine denials of Chelsea's other various motions. This motion was denied, because the case was under appeal in the Vermont Supreme Court and therefore the Commission did not have jurisdiction to grant the requested relief. The Commission then offered that if Chelsea were to dismiss its appeal at the Vermont Supreme Court and file a new petition reflecting its proposed changes to the project, the Commission would then consider the revised project under a new docket. On October 17, 2017, Chelsea filed a 45-day advance notice of the revised Chelsea II Solar project, hereinafter referred to as the "Willow Road Project." The appeal of Chelsea I at the Vermont Supreme Court was dismissed by the Chelsea petitioners. On November 28, 2017, Chelsea filed a new petition for the proposed project on Willow Road.

In recognition of the concerns of the Town and many residents of Bennington, and surrounding landowners, the Department commissioned an independent expert review of the proposed project's impact on aesthetics and orderly development. On June 22, 2018, the Department filed the report of its independent expert, which concluded that the Willow Road Project would interfere with the orderly development of the region, and, without additional

mitigation, would have an undue adverse impact on aesthetics. On June 26, 2018, Chelsea filed a second motion seeking to vacate the denial orders in the original Chelsea I docket, in an effort to revive an MOU with the Department which was in effect in Chelsea I, and which would prohibit the Department from entering the expert report. This motion was also denied.

The case involves sensitive issues regarding land use, aesthetics, orderly development of the region, and the appropriate application of Bennington's Town Plan. The Town of Bennington was granted intervenor status in the case, and the Town was initially adverse to the project, although the Town eventually entered into a settlement with the petitioners which resulted in the Town withdrawing its opposition to the project. The Apple Hill Homeowners Association ("AHHA"), which comprises the neighborhood of homes adjacent to the project parcel, was also granted intervenor party status in the case, and the AHHA continues to vigorously oppose the project. The owner of the residence which is closest to the proposed project was granted intervenor status, as were two other residents of Bennington, and the owner of the Mount Anthony Country Club. The three homeowner intervenors were served with notices of deposition by the petitioner, and all three filed notices of withdrawal as parties to the proceeding before being deposed.

The proposed project involves the removal of 9.28 acres of existing forest, with a fenced-in project area of 7.10 acres. The removal of this forest landscape is at the core of the opposition to the project, and the visual and aesthetic impacts of this landscape change are the primary concerns. Residents of the AHHA are concerned about the visual changes to the character of the neighborhood, and concerned about the loss of the forest in terms of its current ability to buffer sound from the nearby highway infrastructure. More distant residents of the Bennington area are concerned about the aesthetic impacts in terms of scenic viewpoints, scenic gateways, and distant views.

The petitioners have two separate experts on aesthetics and orderly development, and each of them has filed reports in the proceeding which conclude that the proposed project would not interfere with the orderly development of the region, and would not have an undue adverse impact on aesthetics. Challenging energy infrastructure siting cases present situations in which analyses of qualified experts, who are unbiased and disinterested, may come to conflicting conclusions regarding the impact of the project. This is further complicated by the fact that modelling the visual and aesthetic impact of a proposed project is a predictive analysis, and the

true impact of a proposed project cannot be assessed until after the project is built. In recognition of these factors, the Department wanted to be certain that the evidentiary record on aesthetic impact and orderly development was fully developed, and that the expert opinion of a qualified landscape architect was presented to the Commission, on behalf of the interests of the State of Vermont, as a part of the record for decision.

Regarding the aesthetic impact of the project, the Department's expert recommended six aesthetic mitigation measures, which if implemented, would result in a project which would not cause an undue adverse impact on the aesthetics and scenic beauty of the area. As a part of the settlement between the Town of Bennington and the Petitioners, several of the Department's expert's recommendations have been adopted.

Discovery in the docket was extensive, with the petitioners serving approximately 1,120 questions (counting subparts to questions) on the other parties to the case, and the other parties serving approximately 110 discovery questions on the petitioners. The petitioner also sought to depose at least seventeen (17) people. As of October 10, 2018, there have been 193 filings in this docket, with 175 exhibits filed in support of those filings.

Evidentiary hearings in this proceeding were held on September 20 and 21, 2018, with post-hearing briefs due at the end of October. The Department continues to take the position, based on the expert analysis which was commissioned by the Department, the Willow Road Project would interfere with the orderly development of the region. On a related note, on September 26, 2018, the Commission issued an order granting a CPG to Apple Hill Solar LLC, which is the separate but adjacent project, of very similar size and scope, being developed by the same petitioner in the vicinity of the Apple Hill neighborhood.

17-3550-INV Investigation regarding the alleged failure of Vermont Gas Systems, Inc. to bury the pipeline at the required depth in New Haven, Vermont

On June 2, 2017, Vermont Gas Systems, Inc. ("VGS") filed a request with the PUC for a determination of a non-substantial change to the Addison Natural Gas Project ("ANGP") approved in docket 7970. VGS's request notified the Commission that the pipeline was not buried to the required depth of four (4) feet in approximately 18 locations within a half-mile stretch of swampy ground in New Haven. VGS did bury the pipeline to a depth of at least three

(3) feet in this area, consistent with the minimum depth required by the federal pipeline code at 49 C.F.R. § 192.327.

In response to this filing, the Department reviewed the technical data regarding these insufficient burial depths. The Department determined at that time that the pipeline continued to meet federal and state pipeline safety standards requiring burial to three feet, and that any additional risk presented by the reduced depth of cover in this area could be reasonably mitigated by VGS with the deployment of additional operating protocols. While the Department's review at the time was focused on the continued safety of the pipeline, the Department notified the Commission in a letter on June 23, 2017, that it was requesting an investigation into the reason why VGS did not bury the pipeline to the required four feet in the specified locations, including an evaluation of the construction techniques used, the difficulties involved, and the efforts made by VGS to comply with the four-foot requirement.

On July 14, 2017, the Commission issued an order opening an investigation into whether the company violated the 2013 Final Order and CPG by burying the pipeline at less than the required four feet at 18 locations in New Haven.

On December 6, 2017, the Commission issued an order providing notice of the Commission's intent to contract for an independent third-party expert to assess the data in the self-certification of the pipeline depths filed by VGS on August 11, 2017.

On February 16, 2018, the Department initiated an enforcement proceeding against VGS by serving a Notice of Probable Violations ("NOPV") on VGS. Throughout the construction and commissioning of the ANGP, the Department conducted numerous pipeline safety inspections related to the construction and installation of the ANGP. During the inspections and subsequent review of VGS submittals, the Department became aware of several probable violations of federal pipeline regulations. These items were brought to the attention of VGS representatives at the time of discovery and again during multiple subsequent meetings with VGS representatives.

The NOPV presented two distinct types of probable violations, as well as one additional area of concern. These probable violations related to pipe support (pipe installed on bottom of trench), trench breakers, and pipe coating. As a result of the NOPV, the Department proposed a remediation plan which would appropriately address any increased risk to the long-term integrity of the pipeline resulting from the alleged violations, and VGS and the Department executed an

MOU in which VGS committed to execute those remedial measures for the life of the pipeline. The Commission assigned Case No. 18-0395 to this NOPV.

On March 1, 2018, intervenors in the depth of cover matter filed a letter with the Commission alleging that the ANGP construction and installation failed to comply with the CPG in other specific respects outside the depth of cover, several of which were raised in the Department's NOPV. The Intervenors requested that the Commission expand the scope of the investigation to include the allegations they raised. VGS responded by requesting that the independent expert to be retained by the Commission review the pipeline construction concerns addressed by the Department's NOPV, the concerns raised by the intervenors, and the original depth of cover concerns. The Department supported the plan to have the independent expert review all of the allegations, and on April 5, 2018, the Commission issued an order notifying the parties that the scope of the investigation to be conducted by the independent expert would be expanded to include the additional allegations, both from the Department's NOPV and from the intervenors. As a result of this, the NOPV docket was stayed, as those Probable Violations are now included in the ongoing depth of cover investigation.

On September 18, 2018, the Commission issued a notice to the parties advising them that it had received a response to its RFP for a qualified expert to conduct the independent review of the pipeline construction. In addition to the depth of cover, the expert will also conduct inquiries with all the parties to the investigation to determine whether VGS failed to (1) develop and comply with a QA program to oversee the pipeline contractor and subcontractor; (2) lay the pipe in clean sand above the trench bottom; (3) test the compaction of backfill over the pipeline; (4) ensure that the pipeline was properly coated; (5) have an adequate cathodic protection system before gassing up; and (6) install bentonite trench breakers to protect wetlands and streams.

In the time since the NOPV was stayed, VGS has initiated the remediation it agreed to in its MOU with the Department as a result of the NOPV letter. This remediation involves the increased frequency of pipeline inspections, and the first complete in-line inspection data collection runs were completed during the summer months. On September 26, 2018, VGS conveyed to the Department the final report regarding the In-Line Inspection of the Addison Expansion transmission line. VGS reports that no anomalies were detected which would require remediation under state or federal regulations. Consistent with best practices, VGS' current

Transmission Integrity Plan, and as previously recommended by the Department, Vermont Gas will be conducting the following post-ILI activities.

1. Review the ILI report to choose indications for verification and calibration of the ILI results through post-ILI inspection verification excavations. VGS will select at least 10 locations, including those with the most significant indicators and, after reviewing field conditions, select 5 for inspection verification excavations. Representatives from the DPS will be invited to observe the excavations.

2. Summarize the results of the inspection verification excavations. The results of the inspection excavations will be summarized and provided to the DPS. The form of reporting will be similar to the report provided May 9, 2018 regarding the ILI verification digs conducted this spring. VGS intends to provide this summary shortly after completing the last inspection verification excavation.

3. Integrate the results of the ILI with the previously-completed close interval and coating surveys.

The Department has reviewed the data from the ILI and has developed recommendations regarding the validation of the data and the investigation of anomalies. These recommendations have been conveyed to VGS. After all of the ILI data has been compiled into a final integrated report, the Department will continue to work with VGS to identify any additional data gathering or remediation which may be required. The Department has concluded that, based upon an expert analysis of the thousands of data points collected in this ILI, there is no indication that the integrity or safety of the pipeline is compromised.

Requests for Determination of Energy Compliance Pursuant to 24 V.S.A. § 4352

Act 174 created a new energy planning process in Vermont for regional planning commissions and municipalities. Pursuant to this process, a Regional Planning Commission has the option of submitting its duly adopted plan to the Commissioner of the Department of Public Service for an affirmative determination of compliance with the statutory standards of 24 V.S.A.

§ 4352. When a plan has received an affirmative compliance determination under Section 4352, the PUC is required to afford substantial deference in 30 V.S.A. § 248 proceedings to the land conservation measures and specific policies contained in such a plan when reviewing any proposed electric generation facility in the region covered by the plan.

On an ongoing basis, 24 V.S.A. § 4352 envisions Regional Planning Commissions requesting determinations of energy compliance from the Department of Public Service and municipalities requesting determinations from the Regional Planning Commissions. More specifically, § 4352(g) offered a time-limited option which expired July 1, 2018, for municipalities whose plan had been confirmed under 24 V.S.A. § 4350 to seek issuance of a determination of energy compliance from the Commissioner of Public Service if it was a member of a Regional Planning Commission whose regional plan had not received such a determination.

Since April 21, 2017, the Department has received requests for a determination of energy compliance from the following Regional Planning Commissions and municipalities:

Bennington County Regional Commission

Town of New Haven

Northwest Regional Planning Commission

Two Rivers-Ottauquechee Regional Commission

Town of Benson

Town of Sudbury

Windham Regional Commission

Northeastern Vermont Development Association

Lamoille County Planning Commission

Central Vermont Regional Planning Commission

Chittenden County Regional Planning Commission

Rutland Regional Planning Commission

Southern Windsor County Regional Planning Commission

Addison County Regional Planning Commission

Of these fourteen requests, only the request of the Addison County Regional Planning Commission remains pending at this time. The Commissioner determined that the plan submitted by the Town of New Haven, did not comply with the statutory standards of 24 V.S.A. § 4352, though the Department offered technical assistance to the town. The Commissioner has issued twelve affirmative determinations of compliance.

Conclusion

Title 30 tasks the Department with policy, planning and regulatory functions. As exemplified by the Department's advocacy and leadership in examining and evaluating alternative regulation, protecting ratepayer interests through comprehensive policy planning and targeted, integrated policy execution and advocacy lies at the heart of the Department's regulatory mission.

In executing this mission, the Department remains at all times mindful of its role as the ratepayer advocate. As this report makes clear, this past year has seen many hours and much intellectual capital in advancing the totality of ratepayer interests specifically, and the public interest more generally, through advocacy in traditional rate cases, as well as in proceedings regarding the basics of rate regulation more generically. The Department looks forward to continuing this work in the coming years.